



To: House Judiciary Committee
From: Kimberly Buddin, ACLU of Michigan
Date: September 9, 2020
RE: SB 341
Position: Support

In this time of rapid technological change, this legislature has an important role to play in regulating the use of surveillance technology by law enforcement. With the advancement of technology, consumers increasingly rely on electronic devices, like cell phones to work, communicate, search the internet, or call for transportation, track and collect sensitive location information. Unfortunately, our laws have not kept pace with these new technological developments – resulting in confusion among the courts, law enforcement officials, and the public over the protections that apply to location information. ACLU of Michigan supports SB 341 because it provides the public critical privacy protections.

SB 341 Provides Necessary Fourth Amendment Protections In the Use of Cell Site Simulators

Currently, through the use of cell-site simulators, police are able to collect the cellphone location information of anyone in the vicinity of the device. Location tracking enables law enforcement to capture details of someone’s movements for months on end, unconstrained by the normal barriers of cost and officer resources.¹ This is not limited to the targets of police investigations and includes passersby suspected of no wrongdoing. Law enforcement is able to routinely collect this information without a probable cause warrant or other appropriate privacy protections. As this has become an increasing problem, similar measures to SB 341 have passed all over the country.

The availability of information and the length of time this information is stored varies with the policies of each mobile phone carrier. Verizon has reported storing location information for one year;² T-Mobile keeps historical cell site information for six months;³ Sprint reportedly stores information from 18 to 24 months,⁴ and AT&T retains location information for up to five years.⁵ This is why limitations around retention are critical.

Law enforcement must be required to obtain a probable cause warrant to access past or

¹ See *United States v. Pineda-Moreno*, 617 F.3d 1120, 1124 (9th Cir. 2010) (Kozinski, J, dissenting from denial of rehearing en banc) (“The modern devices used in Pineda- Moreno’s case can record the car’s movements without human intervention—quietly, invisibly, with uncanny precision. A small law enforcement team can deploy a dozen, a hundred, a thousand such devices and keep track of their various movements by computer, with far less effort than was previously needed to follow a single vehicle.”).

² Letter from William B. Peterson, General Counsel, Verizon Wireless to the Honorable Edward J. Markey, United States Senator 3 (Oct. 3, 2013), available at http://www.markey.senate.gov/imo/media/doc/2013-12-09_VZ_CarrierResponse.pdf.

³ U.S. Dep’t of Justice, Retention Periods of Major Cellular Service Providers (Aug. 2010), available at <https://www.aclu.org/cell-phone-location-tracking-request-response-cell-phone-company-data-retention-chart>.

⁴ *Id.*

⁵ Letter from Timothy P. McKone, Executive Vice President, Federal Relations, AT&T to the Honorable Edward J. Markey, United States Senator (Oct. 3, 2013), available at http://www.markey.senate.gov/imo/media/doc/2013-10-03_ATT_re_Carrier.pdf.



real-time location information to ensure adequate Fourth Amendment protections. The intimate nature of the information that might be collected by this technology—even the limited collection of location information—can reveal intimate and detailed facts about a person. This privacy invasion is multiplied many times over when law enforcement agents obtain this information for prolonged periods of time. As the Supreme Court explained, “[s]ociety’s expectation has been that law enforcement agents and others would not -- and indeed, in the main, simply could not -- secretly monitor and catalog every single movement of an individual’s car, for a very long period.”⁶ There have always been facets of life which have been uniquely safeguarded from the intrusive interference and observation of government. Location tracking threatens to make even those aspects of life an open book to law enforcement.

Michigan’s residents deserve better. They deserve to be protected and have more control over how and when police use surveillance and greater accountability for the police.

We urge this legislature to pass SB 341.

Respectfully submitted,

Kimberly S. Buddin
Policy Counsel
American Civil Liberties Union of Michigan
kbuddin@aclumich.org

⁶ *Id.* at 964 (Alito, J., concurring).